IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No. 229 of 2004 along with
RFA Nos. 230 to 232 of 2004 &

Cross Objections Nos. 357/2004 in RFA No.229 of 2004, 358/2004 in RFA No. 230/2004, 354/2004 in RFA No.231/2004 & 396 of 2004 in RFA No. 232 of 2004.

Date of Decision : 5.4.2008

RFA No. 229 of 2004

LAC and others ..... Appellants.

Versus:

Joginder Singh & others ..... . Respondents.

RFA No. 230 of 2004

LAC and others ..... Appellants.

Versus:

Devender and another ..... Respondents.

RFA No. 231 of 2004

LAC and others ..... Appellants.

Versus:

Hari Dass ..... Respondent.

RFA No. 232 of 2004

LAC and others ..... Appellants.

Versus:

Dhani Ram ..... Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes

For the appellants: Mr. Vivek Thakur, Addl. A. G. with Ms. Shubh Mahajan, Dy. A. G.

For the respondents. Mr. Ramakant Sharma, Advocate

Sanjay Karol, J. (Oral).

The present appeals arise out of the common award dated 31.3.2004, passed by the Additional District Judge,

Sirmaur District at Nahan (H.P.), therefore, they are being considered and disposed of by a common judgment.

For the public purpose, namely, construction of Yashwant Nagar-Daraodevria-Sarahan road, on 11.9.1996 the appellant-State issued a Notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') which was published in the H. P. Rajpatra on 5.10.1996. In terms of the Collector's award No. 33/2000 dated 29.6.2000, the Collector awarded the compensation for different categories/ classification of the acquired land as under:-

1. Kuhal Salan	Rs.18,999.24	per bigha
2. Kuhal Shashmahi	Rs.13,999.46	per bigha
3. Ober Khadi	Rs.10,332.92	"
4. Ober Gair Khadi	Rs. 6,499.74	"
5. Banjar Kadeem	Rs. 1,499.74	"
6. Ghasni	Rs. 1,166.62	"
7. Nakabil	Rs. 500.00	"

Aggrieved by the same, the claimants filed different petitions u/s 18 of "the Act".

The matters were heard together and common evidence was led by the parties.

Considering the material on record, the court below partly allowed the reference petitions by uniformly awarding a sum of Rs.13,999.46 per bigha as compensation, regardless of the category and classification of the acquired land. However, since the possession of the land was taken much prior to the

issuance of the Notification under Section 4 of "the Act", interest on the compensation was awarded from the date of possession. All the land reference petitions were disposed of by a common award dated 31.3.2004 which is impugned herein.

Aggrieved by the impugned award, the State has filed these appeals and in RFA Nos. 229 to 232 of 2004 cross objections have also been filed by the claimants-land owners.

A chart depicting the respective Land Reference Petitions and the RFAs is reproduced as under:-

Sr. No.	**Land Ref. Petition No.**	**Name of party**	**RFA No.**	**Cross Objections No.**
1.	21-N/4 of 2001	Joginder Singh & Ors.v. LAC & ors.	229/2004	357/2004
2.	22-N/4 of 2001	Devender & Anr.v. LAC & ors.	230/2004	358/2004
3.	23-N/4 of 2001	Hari Dass v. LAC & ors.	231/2004	354/2004
4.	24-N/4 of 2001	Dhani Ram & Ors.v. LAC & ors.	232/2004	396/2004

I have heard the learned counsel for the parties and also perused the material on record.

Shri Vivek Thakur, Addl. Advocate General, for the State has challenged the award on the ground that keeping in view the ratio of laid down by the Apex Court in *Siddappa Vasappa Kuri and another* v. *Special Land Acquisition Officer and another* (2002(1)SCC 142), interest on the enhanced amount could not have been awarded from the date of possession but

only from 5.10.1996, the date of publication of the Notification; the enhancement is on the higher side and no uniform rate could have been applied for all categories.

According to Shri Ramakant Sharma, learned counsel for the objector, the compensation has to be awarded on the basis of award dated 31.12.2002 (Ext.P-4) passed by the Addl. District Judge, Sirmaur District at Nahan, H.P. in Land Reference Petition No. 1-N/4 of 2000 and other connected matters as according to him this award has attained finality and has also been referred to and relied upon in RFA Nos. 285 to 287 of 2007. He fairly conceded that the interest on the enhanced amount could have been awarded only from the date of publication of the Notification.

There is no dispute with regard to the category and extent of land acquired under the Notification in question.

In support of their claim, the claimants produced six witnesses; Shri Joginder Singh (PW-1) (claimant in RFA No.229/2004), Shri Dhani Ram (PW-2) (claimant in RFA No.232/2004)), Shri Hari Dass (PW-3) (claimant in RFA No.231/2004), Shri Hem Raj (PW-4), Shri Mast Ram (PW-5) and Utter Singh (PW-6) patwari. The claimants also placed on record judgments of various courts; Ext.PW-4/A, Ext.PW-4/B, Ext.PW-5/A, Ext.PW-5/B; Sale Deeds Ext.P-1, Ext.P-2, Ext.P-3; award Ex.P-4 and one yearly average certificates Ext.PW-6/A to PW-

6/C. No evidence was led by the respondents except for tendering on record a copy of the Sale Deed Ext.R-1.

In *Siddappa Vasappa Kuri* (supra), the Apex Court has held as under:-

> "It is clear from Section 23(1-A) of the Land Acquisition Act that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier."

In *Sunder* v. *Union of India* (2001(7) SCC 211), the Apex Court has held as under:-

> "Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling, normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the court

fixes as per the provisions of the Act. The solatium envisaged in sub-section (2) "in consideration of the compulsory nature of the acquisition" is thus not the same as damages on account of the disinclination to part with the land acquired.

It is legal obligation of the Collector to pay "the compensation awarded by him" to the party entitled thereto. It is clarified that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub sections thereof as well. It is thus clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub sections thereof."

In *Chimanlal Hargovinddas* v. *Special Land Acquisition Officer, Poona and another* (AIR 1988 SC 1652), the Apex Court has held as under :-

1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.
2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer at the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against

the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reserve the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course, the materials placed and proved by the other side can also be taken into account for this purpose.

5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under section 4 of the Land Acquisition Act (dates of Notification under sections 6 and 9 are irrelevant).

6) The determination has to be mad standing on the date line of valuation (date of publication of notification under section 4) as if the valuer is a hypothetical purchaser wiling to purchase land from the open market land is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at reasonable price.

7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land).

9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay higher price on account of the resultant improvement in development prospects.

10) The most comparable instances out of the genuine instances have to be identified on the following considerations:-

(i) proximity from time angle;

(ii) proximity from situation angle.

In *L.A.C., Solan* v. *Bhoop Ram* (1997(2) SLC, 229), this Court has held as under:-

> "The Land Acquisition Collector and the District Judge have determined the market value at a lesser rate for the acquired land, which was classified as Bangar Doem, Bangar Kadim, Ghasni, Charand and Gair Mumkin but in our view the classification of acquired land for the agricultural purpose is not relevant looking to the common purpose of acquisition for the construction of road and uniform rate of Rs.40 per square meter or Rs.30,000/- per Bigha should be awarded irrespective of the classification of the acquired land."

Thus, it is clear that since the land was acquired for construction of the road and has been utilized in its entirety, the compensation has to be uniformly awarded to the claimants regardless of their classification and category of the land.

The acquired land is situated in village Cheola Bakang, Tehsil Pachhad, Distt. Sirmaur H.P.

From the sworn testimonies of PW-1, PW-2 & PW-3, it is clear that the claimants have been using the land for agricultural purpose and were having income from the same. They have specifically deposed that the land belonging to the residents of village Maryog was also acquired by the Government for construction of road by the same department and the land of village Maryog and village Cheola Bakang, are same and similar in nature and potentiality. It has also come on record that the boundaries of village Cheola Bakang and village Maryog are adjoining, and nature and potentiality of the land in both the villages is same and similar. It has also come on record that the acquired land is adjacent to the state Highway and the claimants and the villagers are enjoying the facilities of High School, Post Office, Dispensary etc. The acquired land is in close proximity of the Horticulture and Forestry University, Nauni, Distt. Solan, H. P. They have also referred to and relied upon award Ext.P-4.

Ext.P-4 is the award whereby the land was acquired vide Notification dated 7.8.1995 for construction of a road by the same department. In terms of the said award, the Collector had awarded compensation ranging from Rs.5,000/- to Rs.30,000/- per bigha. In the land reference petition filed by the claimants, the said amount was enhanced to Rs.1,50,000/- per bigha which was uniformly applied regardless of the classification and nature of the acquired land. The award Ext.P-4 was also considered and made basis by the Addl. District Judge, Sirmaur at Nahan,

while deciding the Land Reference Petition No. 19-N/4 of 2001 vide award dated 2.7.2007 where the acquisition was also for the very same road which is the subject-matter of the present appeal. The acquired land under Ext.P4 and the present acquisition is from the same village. The appeals assailing the said award dated 2.7.2007 were dismissed by this Court in terms of the judgment dated 1.4.2008 passed in RFA Nos. 285, 286 & 287 of 2007.

Thus, award Ext.P-4 can be made basis for determining the market value of the land and payment of compensation to the claimants which is just fair and reasonable. The land acquired in terms of award Ex.P-4 is proximate to the time of the acquisition proceedings in the present appeal. As has already been noticed above, the evidence with regard to the vicinity and similarity has already come on record. The witnesses have deposed that the acquired land vide Ext.P-4 has the same potentiality, use and nature and are also in close proximity. The public purpose in both the cases is construction of roads. It is proximate in time to the date of publication of the Notification. It has come on record that the claimants were having regular income from the acquired land and the entire land has been utilized for the construction of the road.

In my view, the amount of compensation awarded is just fair and reasonable.

For the aforesaid reasons, the claimants would be entitled to compensation @Rs.1,50,000/- per bigha irrespective of the classification and category of the land. The claimants shall also be entitled to all statutory benefits including solatium and interest in accordance with the provisions of the Act and particularly Sections 23(1)(a), 23(2), 24, 28 & 34. Needless to add the compensation shall be payable in accordance with the principles laid down by the Apex Court in *Sunder* (supra). However, it is also directed that the benefit shall ensue to the claimants only from the date of publication of the Notification i.e. 5.10.1996.

The appeals and the cross objections are disposed of accordingly.

As per the sworn testimony of the claimants, the actual possession of the land was taken much prior to the issuance of the Notification, acquired in the same. The claimants have been deprived of their rightful use of their land. In the interest of justice, it is directed that the State shall pay the enhanced amount to the claimants within a period of six months.

(Sanjay Karol),
Judge.

April 5, 2008.
(***rana***)